

**Council for Trade-Related Aspects of
Intellectual Property Rights**

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**MAIN DEDICATED INTELLECTUAL PROPERTY
LAWS AND REGULATIONS NOTIFIED UNDER
ARTICLE 63.2 OF THE AGREEMENT**

NAMIBIA

The present document reproduces the text¹ of the Unified Bill on Intellectual Property Rights, as notified by Namibia under Article 63.2 of the Agreement (see document IP/N/1/NAM/1).

**Conseil des aspects des droits de propriété
intellectuelle qui touchent au commerce**

**PRINCIPALES LOIS ET RÉGLEMENTATIONS CONSACRÉES À LA
PROPRIÉTÉ INTELLECTUELLE NOTIFIÉES AU TITRE
DE L'ARTICLE 63:2 DE L'ACCORD**

NAMIBIE

Le présent document contient le texte¹ de -----
---, notifié par le Namibie au titre de l'article 63:2 de l'Accord (voir le document IP/N/1/NAM/1).

**Consejo de los Aspectos de los Derechos de Propiedad
Intellectual relacionados con el Comercio**

**PRINCIPALES LEYES Y REGLAMENTOS DEDICADOS A LA
PROPIEDAD INTELECTUAL NOTIFICADOS EN VIRTUD
DEL PÁRRAFO 2 DEL ARTÍCULO 63 DEL ACUERDO**

NAMIBIA

En el presente documento se reproduce el texto¹ de -----
-----, notificado por Namibia en virtud del párrafo 2 del artículo 63 del Acuerdo (véase el documento IP/N/1/NAM/1).

¹ In English only./En anglais seulement./En inglés solamente.

B I L L

To provide for the registration and protection of patents, utility model certificates, industrial designs and trade marks and for matters related thereto.

(Introduced by the Minister of Trade and Industry)

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BE IT ENACTED by the Parliament of the Republic of Namibia as follows:-

PART I
PRELIMINARY

Definitions

1. In this Act, unless the context indicates otherwise -

"ARIPO" means the African Regional Intellectual Property Organization;

"Banjul Protocol" means the Protocol on Marks within the Framework of ARIPO;

"collective mark" means any visible sign designated as such in the application for registration and capable of distinguishing the origin or any other common characteristic, including the quality, of goods or services of different enterprises which use the sign under the control of the registered owner of the collective mark;

"court" means the High Court of Namibia as defined in section 1 of the High Court Act, 1990 (Act No. 16 of 1990);

"exploitation" means -

(a) in respect of a patented invention any of the following acts -

- (i) when the patent has been granted in respect of a product, the making, importing, exporting, offering for sale, selling and using the products or stocking such products for the purposes of offering for sale;
- (ii) when the patent has been granted in respect of a process, using the process or doing any of the acts referred to in subparagraph (i) in respect of a product obtained directly by means of the process; and

(b) in respect of a registered industrial design, the making, selling or importation of articles, incorporating the industrial design;

"Harare Protocol" means the Protocol on Patents and Industrial Designs within the Framework of ARIPO;

"industrial design" means any composition of lines or colours or any three-dimensional form, whether or not associated with lines or colours, where such composition or form gives a special

appearance to a product of industry or handicraft and can serve as a pattern for a product of industry or handicraft but does not include anything in an industrial design which serves solely to obtain a technical result and to the extent that it leaves no freedom as regards arbitrary features of appearance;

"International Classification" means, as regards industrial designs, the classification according to the Locarno Agreement Establishing an International Classification for Industrial Designs and, as regards marks, the classification according to the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, of June 15, 1957, as last revised;

"mark" means any visible sign capable of distinguishing goods or services of an enterprise;

"Minister" means the Minister of Trade and Industry;

"Paris Convention" means the Paris Convention for the Protection of Industrial Property of March 20, 1983, as last revised;

"patent" means the title granted to protect an invention;

"Patent Co-operation Treaty" means the Patent Co-operation Treaty done at Washington on June 19, 1970;

"priority date" means the date of the earlier application that serves as the basis for the right of priority provided for in the Paris Convention;

"registers" means the registers referred to in section 6(1);

"Registrar" means the person appointed as Registrar in terms of 3;

"regulations" means regulations made under section 63;

"trade name" means the name or designation identifying and distinguishing an enterprise;

"utility model certificate" means a certificate referred to in Part V.

PART II ADMINISTRATION

The Patents, Marks and Designs Office

2. The office responsible for the registration and protection of patents, marks and designs shall, notwithstanding the repeal of the laws governing patents, marks and designs, continue to exist for the purposes of registering and protection thereof, and for the other purposes of this Act.

Appointment of Registrar, Deputy Registrar and Assistant Registrars

3. Subject to the laws governing the Public Service, the Minister -
- (a) shall appoint a person as the Registrar, who shall be responsible for the administration of this Act, and who shall perform such duties and functions, and exercise such powers as may be conferred on him or her by this Act or any other law;
 - (b) may appoint a person as the Deputy Registrar who may, subject to the control and directions of the Registrar, exercise or perform any of the powers, duties and functions of the Registrar;
 - (c) may appoint Assistant Registrars who shall perform such duties and functions as may be necessary to assist the Registrar in the performance of the duties and functions imposed upon the Registrar by or under this Act or any other law.

Powers, duties and functions of the Registrar

4. Without derogating from the generality of the provisions of section 3, the Registrar shall exercise and perform the following powers, duties and functions, namely to -

- (a) process all applications made in terms of this Act;
- (b) grant patents and utility model certificates;
- (c) register industrial designs, marks and collective marks;
- (d) administer granted patents and utility model certificates and registered industrial designs, marks and collective marks;
- (e) carry out studies, programmes or exchanges of items or services regarding domestic and international industrial property law;
- (f) establish and maintain a bulletin of marks, patents and designs in which shall be published all matters that are required to be published under this Act.

Seal of office

5. The Registrar shall have a seal of office and the impression of the seal shall be judicially noticed.

Registers and Official Bulletin

6. (1) (a) The office of the Registrar shall maintain separate registers for patents, industrial designs and marks. Collective marks shall be registered in a special section of the Register of Marks. All the recordings provided for in this Act shall be effected in the said registers.

- (b) The registers may be consulted by any person, and any person may obtain extracts from the registers under the conditions prescribed in the regulations.

(2) The office of the Registrar shall publish in the Official Bulletin all the publications provided for in this Act.

PART III

PATENTS

Inventions

7. Subject to the provisions of section 8, an invention may be or may relate to a product or process.

Matters excluded from patent protection

8. The following, even if they are inventions in terms of section 1, shall be excluded from patent protection -

- (a) discoveries, scientific theories and mathematical methods;
- (b) schemes, rules or methods for doing business, performing purely mental acts or playing games;
- (c) plant or animal varieties or essentially biological processes for the production of plants or animals, other than microbiological processes and the products of such processes.
- (d) methods for the treatment of the human or animal body by surgery or therapy, as well as the diagnostic methods practised on the human or animal body. This provision shall not apply to products for use in any of those methods.

Patentable inventions

9. (1) An invention is patentable if it is new, involves an inventive step and is industrially applicable.

(2) (a) An invention is new if it is not anticipated by prior art.


(b) Prior art shall consist of everything disclosed to the public, anywhere in the world, by publication in tangible form or, in Namibia, by oral disclosure, by use or in any other way, prior to the filing or, where appropriate, the priority date, of the application claiming the invention.

(c) For the purposes of paragraph (b) disclosure to the public of the invention shall not be taken into consideration if it occurred within twelve months preceding the filing date or, where applicable, the priority date, of the application, and if it was by reason or in consequence of acts committed by the applicant or his or her predecessor in title or of an abuse committed by a third party with regard to the applicant or his or her predecessor in title.

(3) An invention shall be considered as involving an inventive step if, having regard to the prior art relevant to the application claiming the invention and as defined in subsection (2)(b), it would not have been obvious to a person having ordinary skill in the art.

(4) An invention shall be considered industrially applicable if it can be made or used in any kind of industry. "Industry" shall be understood in its broadest sense; it shall cover, in particular, handicraft, agriculture, fishery and services.

the commercial exploitation of which would be

(5) Inventions  contrary to public order or morality shall not be patentable.

Right to patent and naming of inventor

10. (1) Subject to this section, the right to a patent shall belong to the inventor.

(2) If two or more persons have jointly made an invention, the right to the patent shall belong to them jointly.

(3) If and to the extent to which two or more persons have the same invention independently of each other, the person whose application has the earliest filing date or, if priority is claimed, the earliest validly claimed priority date and leads to the grant of a patent shall have the right to the patent, as long as the said application is not withdrawn, abandoned or rejected.

(4) The right to a patent may be assigned, or may be transferred by succession.

(5) Where an invention is made in execution of an employment contract, the right to the patent shall belong, in the absence of contractual provisions to the contrary, to the employer.

(6) When an invention is made in execution of a commission or an employment contract, the right to the patent for that invention shall belong, in the absence of contractual provisions to the contrary, to the person having commissioned the work or to the employer, as the case may be.

(7) When the invention has an economic value much greater than the parties could have reasonably foreseen at the time of concluding the contract, the inventor shall have a right to equitable remuneration, which shall be determined by the court in the absence of agreement between the parties.

(8) Notwithstanding subsections (6) and (7), when an employee, whose employment contract does not require him or her to engage in inventive activity, makes, in the field of activities of his or her employer, an invention by using data or means available to him or her through his or her employment, the right to the patent for that invention shall belong, in the absence of contractual provisions to the contrary, to the employer: Provided that the employee shall have a right to equitable remuneration taking into account his or her salary, the economic value of the invention and any benefit derived from the invention by the employer. In the absence of agreement between the parties, the remuneration shall be determined by the court.

(9) Any contractual provision which is less favourable to the inventor than the provisions of this section shall be null and void.

(10) The inventor shall be named as such in the patent, unless in a special written declaration addressed to the Registrar he or she indicates that he or she wishes not to be named.. Any promise or undertaking by the inventor made to any person to the effect that he or she will make such a declaration shall be without legal effect.

Application for a patent

11. (1) The application for a patent shall be filed with the Registrar and shall contain a request, a description, one or more claims, one or more drawings (where required), and an abstract. It shall be accompanied by the payment of the prescribed application fee.

(2) (a) The request shall contain a petition to the effect that a patent be granted, the name of and other prescribed data concerning the applicant, the inventor and the agent, if any, and the title of the invention.

(b) Where the applicant is not the inventor, the request shall be accompanied by a statement justifying the applicant's right to the patent.

(3) The description shall disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a person having ordinary skill in the art, and shall, in particular, indicate at least one mode known to the applicant for carrying out the invention.

(4) (a) The claim or claims shall define the matter for which protection is sought. The description and the drawings may be used to interpret the claims.

(b) Claims shall be clear and concise and shall be fully supported by the description.

(5) Drawings shall be required when they are necessary for the understanding of the invention.

(6) The abstract shall merely serve the purpose of technical information; in particular, it shall not be taken into account for the purpose of interpreting the scope of the protection.

(7) The applicant may, up to the time when the application is in order for grant, withdraw the application at any time during its pendency.

Unity of invention, amendment and division of application

12. (1) The application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept.

(2) The applicant may, up to the time when the application is in order for grant, amend the application, provided that the amendment shall not go beyond the disclosure in the initial application.

(3) (a) The applicant may up to the time when the application is in order for grant, divide the application into two or more applications herein referred to as “divisional applications”, provided that each application shall not go beyond the disclosure in the initial application.

(b) Each divisional application shall be entitled to the filing date and, where applicable, the priority date of the initial application.

(4) The fact that a patent has been granted on an application that did not comply with the requirement of unity of invention under subsection (1) shall not be a ground for the invalidation of the patent.

Right of priority

13. (1) The application may contain a declaration claiming the priority, as provided for in the Paris Convention, of one or more earlier national, regional or international applications filed by the applicant or his or her predecessor in title in or for any State party to the said Convention or any member of the World Trade Organization.

(2) Where the application contains a declaration under subsection (1) the Registrar may require that the applicant furnish, within the prescribed time limit, a copy of the earlier application certified as correct by the office with which it was filed.

(3) The effect of the said declaration shall be as provided in the Paris Convention.

(4) If the Registrar finds that the requirements under this section and the regulations relating thereto have not been fulfilled, the said declaration shall be considered not to have been made.

Information concerning corresponding foreign applications for patents or other titles of protection

14. (1) The applicant shall, at the request of the Registrar, furnish him or her with the date and number of any application for a patent or other title of protection filed by him or her abroad herein referred to as a "foreign application" relating to the same or essentially the same invention as that claimed in the application filed with the office of the Registrar.

(2) (a) The applicant shall, at the request of the Registrar, furnish him or her with the following documents relating to one of the foreign applications referred to in subsection (1) -

(i) a copy of any communication received by the applicant concerning the results of any search or examination carried out in respect of the foreign application;

- (ii) a copy of the patent or other title of protection granted on the basis of the foreign application;
 - (iii) a copy of any final decision rejecting the foreign application or refusing the grant requested in the foreign application.
- (b) The applicant shall, at the request of the Registrar, furnish him or her with a copy of any final decision invalidating the patent or other title of protection granted on the basis of the foreign application referred to in paragraph (a).

Filing date and examination

15. (1) The Registrar shall accord as the filing date, the date of receipt of the application, provided that, at the time of receipt, the application fee is paid and the application contains -

- (a) an express or implicit indication that the granting of a patent is sought;
- (b) indications allowing to establish the identity of the applicant;
- (c) a part which, on the face of it appears to be a description of an invention.

(2) If the Registrar finds that the application did not, at the time of receipt, comply with the requirements of subsection (1), he or she shall invite the applicant to file the required correction and shall accord as the filing date the date of receipt of the required correction, but if no correction is made, the application shall be treated as if it has not been filed.

(3) Where the application refers to drawings which in fact are not included in the application, the Registrar shall invite the applicant to furnish the missing drawings.

(4) If the applicant complies with the invitation referred to in subsection (3), the Registrar shall accord as the filing date, the date of receipt of the missing drawings. Otherwise the Registrar shall accord as the filing date, the date of receipt of the application and shall treat any reference to the said drawings as non-existent.

(5) After according a filing date the Registrar shall examine whether the application complies with the requirements of section 11(1) and (2) and the regulations relating thereto and those requirements of this Act and the regulations which are designated as formal requirements for the purposes of this Act.

(6) Where the Registrar is of the opinion that the application complies with the requirements indicated in subsection 5, the Registrar shall cause the application to be examined as to whether the requirements of sections 7, 8, 9, 11(3), (4), (5), (6), (7), 12 and 14 and the regulations relating thereto are complied with.

(7) The regulations may prescribe that, in respect of some categories of inventions, the examination shall not cover the requirements of novelty and inventive step under section 9(2) and (3).

Grant of patent, time limit for grant and changes in patents

16. (1) Where the Registrar finds that, subject to section 14(5), the conditions referred to in section 15(5) and (6) are complied with, he or she shall grant the patent. Otherwise, he or she shall refuse the application and notify the applicant accordingly.

(2) Any person who makes an application for a patent but is not the inventor shall furnish to the registrar, in writing, a statement justifying his or her right to the patent.

(3) When he grants a patent, the Registrar shall -

(a) publish a reference to the grant of the patent;

- (b) issue to the applicant a certificate of the grant of the patent and a copy of the patent;
- (c) record the patent;
- (d) make available copies of the patent to the public, on payment of the prescribed fee.

(4) The Registrar shall, whenever possible, make a final decision on the application not later than two years after the commencement of the examination referred to in section 15(6).

(5) The Registrar shall, upon request of the owner of the patent, make changes in the text or drawings of the patent in order to limit the extent of the protection conferred by the patent, provided that the change would not result in the disclosure contained in the patent going beyond the disclosure contained in the initial application on the basis of which the patent was granted.

Rights conferred by patent, ARIPO Protocol Patents, exploitation by Government or person thereby authorised

17. (1) Subject to subsections (3) and (5) and section 19, the exploitation of the patented invention in Namibia by persons other than the owner of the patent shall require the owner's agreement.

(2) The owner of the patent shall, in addition to any other rights, remedies or actions available to him or her, have the right subject to subsections (3) and (5) and section 19 to institute court proceedings against any person who exploits the patent without his or her agreement, in terms of subsection (1), or who performs acts which make it likely that infringement will occur.

(3) The rights under the patent shall not extend -

- (a) to acts in respect of articles which have been put on the market in Namibia by the owner of the patent or with his or her consent;

- (b) to the use of articles on aircraft, land vehicles, or vessels of other countries which temporarily or accidentally enter the airspace, territory or waters of Namibia; or
- (c) to acts done for scientific research.

(4) A patent in respect of which Namibia is a designated State, granted by ARIPO by virtue of the ARIPO Protocol shall have the same effect in Namibia as a patent granted under this Act unless the Registrar has communicated to ARIPO in respect of the application therefor, a decision in accordance with the provisions of the Protocol, that if a patent is granted by ARIPO that patent shall have no effect in Namibia.

(5) Where the public interest, in particular, national security, nutrition, health or the development of other vital sector of the national economy so require, the Minister may decide that, even without the agreement of the owner of the patent, a government agency or a third person designated by the Minister may exploit the invention, subject to the payment of an equitable remuneration to the said owner.

(6) The decision of the Minister in respect of remuneration may be the subject of an appeal before the High court.

Duration and annual fees

18. (1) Subject to subsection (2), a patent shall expire 20 years after the filing date of the application for the patent

(2) In order to maintain the patent or patent application, an annual fee shall be paid in advance to the Registrar for each year, starting one year after the filing date of the application for grant of the patent. A period of grace of six months shall be allowed for the late payment of the annual fee on payment of the prescribed surcharge. If an annual fee is not paid in accordance with the provisions of this subsection, the patent application shall be deemed to have been withdrawn or the patent shall lapse.

Non-voluntary licences

19. (1) On the request of any person who proves his or her ability to work a patented invention in Namibia, made to the Registrar after the expiration of a period of four years from the date of filing of the patent application or three years from the date of the grant of the patent, whichever period expires last, the Registrar may grant a non-voluntary licence if the patented invention is not worked or is insufficiently worked in Namibia.

(2) Notwithstanding subsection (1), a non-voluntary licence shall not be granted if the owner of the patent satisfies the Registrar that circumstances exist which justify the non-working or insufficient working of the patented invention in Namibia. Importation shall not constitute such a circumstance.

(3) The beneficiary of the non-voluntary licence shall have the right to exploit, other than to import the patented invention in Namibia according to the terms set down in the decision granting the licence, shall commence the working of the patented invention in Namibia within the time limit fixed in the said decision and, thereafter, shall work the patented invention sufficiently in Namibia, subject to the payment of an equitable remuneration therefor as determined in the said decision.

(4) The grant of the non-voluntary licence shall not exclude -

- (a) the conclusion of licence contracts by the owner of the patent or the grant of other non-voluntary licences; or
- (b) the exploitation of the patented invention under section 17(5).

Invalidation

20. (1) Any interested person may request the court to invalidate a patent.

(2) The court shall invalidate the patent if the person requesting the invalidation proves that any of the requirements of sections 7, 8, 9, and 11(3), (4) and (5) and the regulations relating thereto is not fulfilled or if the owner of the patent is not the inventor or his or her successor in title.

(3) Any invalidated patent, or claim or part of a claim, shall be regarded as null and void from the date of the grant of the patent.

(4) The final decision of the court shall be notified to the Registrar who shall record it and publish a reference thereto as soon as possible.

PART IV

INTERNATIONAL APPLICATIONS UNDER THE PATENT CO-OPERATION TREATY

Filing date and effects of international applications designating Namibia

21. An international application designating Namibia shall, subject to this Part, be treated as an application for a patent filed under this Act having as its filing date the international filing date accorded under the Patent Co-operation Treaty.

Office of Registrar as receiving office

22. (1) The office of the Registrar shall, unless an agreement is in force under subsection (2) act as a receiving office in respect of any international application filed with it by a resident or national of Namibia.

(2) The office of the Registrar may, with the consent of the Minister, make an agreement referred to in rule 19(1)(b) of the regulations under the Patent Co-operation Treaty whereby an office other than the office of the Registrar shall act as receiving office for applicants who are residents or nationals of Namibia.

Filing of international applications with the office of the Registrar

23. An international application filed with the office of the Registrar as receiving office shall be filed in English and the prescribed transmittal fee shall be paid to the office of the Registrar within one month from the date of receipt of the international application.

Office of Registrar as designated office

24. The office of the Registrar shall act as a designated office in respect of an international application in which Namibia is designated for the purposes of obtaining a national patent under this Act.

Office of the Registrar as elected office

25. The office of the Registrar shall act as an elected office in respect of an international application in which Namibia is designated as referred to in section 24 if the applicant elects Namibia for the purposes of international preliminary examination under Chapter II of the Patent Co-operation Treaty.

National processing

26. The office of the Registrar as designated office or elected office shall not commence processing of an international application designating Namibia before the expiration of the time limit referred to in section 27 except if the applicant complies with the requirements of that section and files with the office of the Registrar an express request for early commencement of such processing.

Entering national phase

27. The applicant in respect of an international application designating Namibia shall, before the expiration of the time limit applicable under Article 22 or 39 of the Patent Co-operation Treaty or of such later time limit as may be prescribed in the regulations -

- (a) pay the prescribed fee to the office of the Registrar; and
- (b) if the international application was not filed in, and has not been published under the Patent Co-operation Treaty as a translation into English, file with the office of the Registrar a translation of the international application, containing the prescribed contents, into English.

Failure to enter national phase

28. If the applicant fails to comply with the requirements of section 27 within the time limit referred to in that section, the international application shall be considered withdrawn for the purposes of this Act.

Processing international applications in accordance with Treaty

29. (1) The office of the Registrar shall process international applications in accordance with the provisions of the Patent Co-operation Treaty, the regulations made thereunder and the administrative instructions authorized to be made under the Treaty and with the provisions of this Act and the regulations made under this Act.

(2) The regulations made under this Act may, provide for the making of further details concerning the processing of international applications by, and other functions, of the office of the Registrar under the Patent Co-operation Treaty, including fees payable, time limits and other requirements relating to international applications.

PART V

UTILITY MODEL CERTIFICATES

Applicability of provisions relating to patents

30. (1) Subject to section 31, the provisions of Part II shall apply, subject to the necessary changes, to utility model certificates or applications therefor, as the case may be.

(2) Where the right to a patent conflicts with the right to a utility model certificate in the case referred to in section 10(3), the said provision shall apply as if the word “patent” were replaced by the words “patent or utility model certificate”.

Special provisions relating to utility model certificates

31. (1) An invention qualifies for a utility model certificate if it is new and is industrially applicable.

(2) Section 9(1) shall not apply in the case of inventions for which utility model certificates are requested.

(3) Section 15(6) shall not apply in the case of applications for utility model certificates.

(4) A utility model certificate shall expire, without any possibility of renewal, at the end of the seventh year after the date of the filing of the application.

(5) With the exception of subsection (5) of section 15, section 15 shall not apply in the case of utility model certificates.

(6) In proceedings under section 20, the court shall invalidate the utility model certificates on the following grounds -

- (a) that the claimed invention did not qualify for a utility model certificate, having regard to subsection (1) and to section 9(2), (3), (4) and (5);
 - (b) that the description and the claims do not comply with the requirements prescribed by section 11(3) and (4) and the regulations relating thereto;
 - (c) that any drawing which is necessary for the understanding of the invention has not been furnished;
 - (d) that the owner of the utility model certificate is not the inventor or his or her successor in title.
- (7) Section 20(2) shall not apply in the case of utility model certificates.

Conversion of patent applications or applications for utility model certificates

32. (1) At any time before the grant or rejection of a patent, an applicant for a patent may, upon payment of the prescribed fee, convert his or her application into an application for a utility model certificate, which shall be accorded the filing date of the initial application.

(2) At any time before the grant or rejection of a utility model certificate, an applicant for a utility model certificate may, upon payment of the prescribed fee, convert his or her application into an application for a patent, which shall be accorded the filing date of the initial application.

(3) No person may convert an application under subsection (1) more than once.

PART VI INDUSTRIAL DESIGNS

Registrable industrial designs

33. (1) An industrial design (hereinafter referred to as “a design”) shall be capable of being registered if it is new.

(2) A design shall be deemed to be new if it has not been disclosed to the public, anywhere in the world, by publication in a tangible form, or by use or in any other way, prior to the filing date or, where applicable, the priority date of the application for registration. Section 9(2)(c) shall apply with the necessary changes.

(3) Disclosure of information which would otherwise affect the registrability of a design claimed in the application shall not affect the registrability of that design where the information was disclosed, during the twelve months preceding the filing date of the application or, where priority is claimed, the priority date of the application -

(a) by the inventor; or

(b) by a third party which obtained the information directly or indirectly from the inventor.

(4) A design which is contrary to public order or morality shall not be registered.

Right to registration of industrial design and naming of creator

34. Section 10 shall apply with the necessary changes.

Application for registration of design

35. (1) An application for the registration of a design shall be filed with the Registrar and shall contain the following -

- (a) a request, in writing, that the design be registered;
- (b) drawings, photographs or other graphic representations of the article embodying the design;
- (c) a statement, in writing, indicating the type of products for which the design is to be used; and
- (d) the prescribed application fee.

(2) Where the applicant is not the creator of the design, he or she shall furnish the Registrar, in writing, such proof of his or her title or authority to apply for the registration of the design as may be prescribed.

(3) An application under this section may be in respect of two or more designs relating to the same class of International Classification or to the same set or composition of articles.

(4) For the purposes of this section, "International Classification" means the classification according to the Locarno Agreement establishing an International Classification for Industrial Designs.

(5) The application at the time of filing, may contain a request that the publication of the design, upon registration, be deferred for a period not exceeding twelve months from the date of filing or, if priority is claimed, from the date of priority, of the application.

(6) The provisions of section 13 shall apply with the necessary changes.

(7) The applicant may, at any time before the registration of a design, withdraw his or her application.

Examination and registration of industrial design

36. (1) Subject to subsection (2) the Registrar shall accord as the filing date the date of receipt of the application.

(2) Notwithstanding subsection (1), the Registrar shall accord as the filing date the date referred to in subsection (1) only if the application meets the following requirements -

- (a) the application fee is paid;
 - (b) the application contains the name of the applicant; and
 - (c) the application contains a specimen of the article embodying the industrial design or a pictorial representation thereof.
- (3) Section 15(2) shall with the necessary changes apply to an application under this subsection.
- (4) (a) After according a filing date, the Registrar shall examine whether the application complies with the requirements of section 35(1) and (2) and the regulations relating thereto.
- (b) The Registrar shall examine whether the design complies with the requirements of section 3 and the regulations relating thereto.
- (5) Where the Registrar finds that the conditions referred in subsection (4) hereof are satisfied, he or she shall register the design, publish a reference to the registration and issue to the applicant a certificate of registration of the design or refuse the application, as the case may be.

Rights conferred by registration

37. (1) No person shall exploit, in Namibia, a design registered in Namibia unless he or she has been authorized, in writing, to do so by the owner of that design.

(2) The person registered as the owner of a design shall, subject to the provisions of this Act, and to any rights appearing from the register of designs to be vested in any other person, have the exclusive right, in Namibia, to make, import or sell any article bearing or embodying the registered design, a design substantially similar to the registered design, or a design substantially different from the registered design, when such acts are undertaken for commercial purposes.

(3) Insert Section 30(4) of WIPO draft.

(4) For the purposes of this section, exploitation of a registered design means the doing of any act mentioned in subsection (2).

(5) The rights of the owner of a registered design shall not extend to acts in respect of which articles have been put on the market in Namibia by such owner, or with his or her consent.

Duration and renewal of registered designs

38. (1) The registration in respect of a design shall expire five years after the filing date of the application for its registration, but may, upon payment of such renewal fee as may be prescribed, be renewed for two further consecutive periods of five years each.

(2) Where the owner of the design pays the renewal fee late, the Registrar shall, upon payment of such surcharge by the owner as may be prescribed, give him or her a period of grace of six months within which he or she must pay the late renewal fee.

ARIPO Protocol designs

39. An industrial design in respect of which Namibia is a designated State, registered by ARIPO by virtue of the ARIPO Protocol, shall have the same effect in Namibia as a design registered under this Act unless the Registrar communicates, to ARIPO, in respect of the

application therefor, a decision, in accordance with the provisions of the Protocol, that if a design is registered by ARIPO, that registration shall have no effect in Namibia.

Invalidation of registered designs

40. (1) Any interested person may request the High Court to invalidate the registration of a design if that person proves that -

- (a) the design is not a design as defined in section 1;
- (b) any of the requirements of section 33 ~~or the regulations relating thereto~~ is not complied with;
- (c) the registered owner of the design is not the creator or his or her successor in title;
or
- (d) on any ground on which the Registrar could have refused to register the design.

(2) An invalidated registration of an industrial design shall be regarded as null and void from the date of the grant of the certificate of registration of the design.

(3) The final decision of the court shall be notified to the Registrar who shall record it and publish it in the bulletin as soon as possible.

PART VII

MARKS, COLLECTIVE MARKS AND TRADE NAMES

Acquisition of exclusive right to a mark and registrability

41. (1) The exclusive right to a mark, as conferred by this Act, shall be acquired by registration in accordance with the provisions of this Act.

- (2) A mark cannot be validly registered if it is -
- (a) incapable of distinguishing the goods or services of one enterprise from those of other enterprises;
 - (b) contrary to public order or morality;
 - (c) likely to mislead the public or trade circles, in particular as regards the geographical origin of the goods or services concerned or their nature or characteristics;
 - (d) identical with, or is an imitation of or contains as an element, an armorial bearing, flag and other emblem, a name or abbreviation or initials of the name of, or official sign or hallmark adopted by, any State, intergovernmental organisation or organisation created by an international convention, unless authorised by the competent authority of that State or organisation;
 - (e) identical with, or confusingly similar to, or constitutes a translation of, a mark or trade name which is well known in Namibia for identical or similar goods or services of another enterprise;
 - (f) identical with a mark belonging to a different proprietor and already on the Register, or with an earlier filing or priority date, in respect of the same goods or services or closely related goods or services, or if it so nearly resembles such a mark as to be likely to deceive or cause confusion.

Application for registration of a mark

42. (1) An application for the registration of a mark, accompanied by such fee as may be prescribed, shall be filed with the Registrar in the prescribed manner and shall contain the following -

- (a) a request;

- (b) a reproduction of the mark; and
 - (c) a list of the goods or services for which registration of the mark is requested, listed under the applicable class or classes of the International Classification.
- (2) The provisions of section 13 in respect of the right of priority shall apply with the necessary changes.
- (3) The applicant may, at any time before the mark is registered, withdraw his or her application.

Examination of application for registration of a mark

43. (1) The Registrar shall examine the application to determine whether it complies with the requirements of section 42(1) and the regulations relating thereto.
- (2) The Registrar shall also determine whether the mark is a mark as defined in section 1 and is registrable under section 41.
- (3) The Registrar shall, if he or she is satisfied that the application complies with the requirements of this section, accept that application and shall, within such time and in a manner prescribed, publish that application in the bulletin.

Opposition to registration of a mark

44. (1) Any interested person may, within the prescribed period and in the prescribed manner, give notice to the Registrar of opposition to the registration of the mark on grounds that one or more of the requirements of section 1 relating to the definition of a mark, and section 41(2) have not been complied with.

(2) The Registrar shall as soon as possible after receiving such notice, send a copy of the notice to the applicant who shall, within such period and in such manner as may be prescribed, send, to the Registrar a counter-statement of the grounds on which he or she relies for his or her application.

(3) If the applicant fails to comply with the provisions of subsection (2), he or she shall be deemed to have abandoned the application.

(4) Where the applicant files his or her counter-statement, the Registrar shall as soon as possible furnish a copy thereof to the person opposing and shall, after hearing the parties, if either or both wish to be heard, and considering the merits of the case, decide whether the mark should be registered.

(5) After the publication of the application and until the registration of the mark, the applicant shall have the same rights and privileges as he or she would have if the mark had been registered, but it shall be a valid defence to an action brought under this section in respect of an act done after the application was published, if the defendant proves that the mark could not validly have been registered at the time the act was done.

Registration of mark

45. (1) Where the Registrar is satisfied that the application for the registration of a mark complies with the requirements of this Act relating to marks, and the registration of the mark has not been opposed within the prescribed time limit, or the registration of the mark has been opposed but he or she has decided in the applicant's favour, the Registrar shall -

- (a) register the mark in the appropriate register and issue to the applicant a certificate of registration; and
- (b) publish, in the bulletin, a reference to the registration of the mark.

(2) Where the requirements for the registration of a mark are not complied with, or an applicant for the registration of a mark has been successfully opposed, the Registrar shall refuse to register that mark.

Rights conferred by registration of mark and transfer of rights thereof

46. (1) No person shall use a registered mark unless he or she has been authorized, in writing, to do so by the registered owner of that mark.

(2) The rights conferred by registration of a mark shall not extend to acts in respect of articles which have been put on the market in Namibia by the registered owner or with his or her consent.

(3) The rights in a mark may be transferred by cession, assignment, testamentary disposition or by operation of law.

Banjul Protocol on marks

47. A mark in respect of which Namibia is a designated State, registered by ARIPO by virtue of the Banjul Protocol, shall have the same effect and enjoy the same protection in Namibia as a mark registered under this Act unless the Registrar communicates, to ARIPO, in respect of the application for that mark, a decision in accordance with the provisions of that Protocol, that if a mark is registered by ARIPO, that mark shall have no effect in Namibia.

Invalidation for registration of mark

48. (1) Any interested person may apply to the Registrar for the invalidation of the registration of a mark on the ground that the requirements of section 41 and section 1 in respect of the definition of a mark have not been complied with.

(2) An application for the invalidation of a registration of a mark shall be served on the owner of the mark in the manner prescribed.

(3) Any invalidation of the registration of a mark shall be deemed to have been effective from the date of registration of the mark and a reference thereto shall be published in the bulletin by the Registrar as soon as possible.

Removal of mark on grounds of non-use

49. (1) Any interested person may by application request the Registrar to remove a mark from the register, in respect of any of the goods or services in respect of which it is registered on the ground that up to one month prior to filing the application, the mark had, after its registration, not been used by the registered owner or a licensee during a continuous period of three or more years.

(2) The Registrar shall not remove a mark from the register if the owner of that mark can show that circumstances existed which prevented the use of the mark and that there was no intention not to use the mark in respect of those goods or services, or that there was no intention to abandon the use of the mark in respect of the said goods or services.

(3) An application for the removal of a mark from the register of marks shall be served on the owner of the mark and filed with the Registrar in the manner and within the time prescribed.

Collective marks

50. (1) Subject to subsections (2) and (3), sections 41 to 48 shall apply to collective marks, save that references in the said provisions to a mark shall be read as being references to a collective mark.

(2) An application for the registration of a collective mark shall designate the mark as a collective mark and shall be accompanied by a copy of the rules governing the use of the collective mark.

(3) For the purposes of subsection (2), "rules" mean the rules made by the person under whose control the collective mark may be used.

(4) The registered owner of a collective mark shall notify the Registrar, in writing, of any changes made in respect of the rules referred to in subsection (2).

Invalidation of registration of collective mark

51. (1) In addition to the grounds referred to in section 48(1), the Registrar shall invalidate the registration of a collective mark if the person requesting the invalidation proves that only the registered owner uses the mark, or that he or she uses or permits its use in a manner which is liable to deceive trade circles or the public as to the origin or any other common characteristics of the goods or services concerned.

(2) An application for the invalidation of a collective mark shall be served on the owner of the mark in the manner and within the time prescribed.

Licensing of marks and collective marks

52. (1) Any licence contract made in respect of the registration of a mark or an application for the registration of a mark shall provide for the effective control, by the licensor or, of the quality of the goods or services of the licensee in connection with which the mark is used.

(2) If the licence contract does not provide for such quality control or if such quality control is not effectively carried out, the licence contract shall not be valid.

(3) The registration of a collective mark, or an application for such registration, may not be the subject of a licence contract.

Trade names

53. (1) A name or designation may not be used as a trade name if by its nature or the use to which it may be put, it is contrary to public order or morality and if, in particular, it is liable to deceive trade circles or the public as to the nature of the enterprise identified by that name.

(2) Notwithstanding any laws or regulations providing for any obligation to register trade names, such names shall be protected, even prior to or without registration, against any unlawful act committed by third parties.

(3) Any subsequent use of the trade name by a third party, whether as a trade name or a mark or collective mark, or any such use of a similar trade name or mark, likely to mislead the public shall be deemed unlawful.

PART VIII

ACTS OF UNFAIR COMPETITION

Acts of unfair competition

54. (1) Any act of competition contrary to honest practices in industrial or commercial matters shall be unlawful.

(2) The following acts, in particular, shall be deemed to constitute acts of unfair competition -

- (a) all acts of such nature as to create confusion by any means whatever with the establishment, the goods, or the industrial or commercial activities, of a competitor;
- (b) the making of false allegations in the course of trade of such nature as to discredit the establishment, the goods, or the industrial or commercial activities, of a competitor;

- (c) indications or allegations the use of which in the course of trade is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity of the goods, of a competitor.

PART IX GENERAL PROVISIONS

Representation by agent

55. Where the applicant's ordinary residence or principal place of business is outside Namibia, he or she shall be represented by a legal practitioner resident and practising in Namibia in accordance with the provisions of the Legal Practitioners' Act, 1995 (Act No. 15 of 1995).

Changes in ownership

56. (1) Any change in the ownership of a patent, a utility model certificate, the registration of an industrial design, mark or collective mark, or in the ownership of an application therefor, shall be in writing and shall, at the request, of any interested party, to the Registrar, be recorded and, except in the case of an application, published by the Registrar.

(2) A change in the ownership of anything mentioned in subsection (1), shall have no effect against third parties unless it has been recorded by the Registrar in the appropriate register.

(3) A change in the ownership of the registration of a collective mark, or in the ownership of an application therefor, shall require the prior approval, in writing, of the Minister.

(4) A change in the ownership of a trade name shall be made with the transfer of the enterprise or part thereof identified by that name and shall be in writing.

(5) A change in the ownership of the registration of a mark or a collective mark shall be invalid if it is likely to deceive or cause confusion particularly in regard to the nature, origin,

manufacturing process, characteristics or suitability for their purpose, of the goods or services in relation to which the mark or collective mark is intended to be used or is being used.

Licence contracts

57. Any licence contract concerning a patent, a utility model certificate, a registered design or registered mark, or an application, or an application for any of the said items shall have no effect against third parties unless it has been recorded by the Registrar in the appropriate register.

Correction of errors

58. (1) The Registrar may correct any clerical error or error in translation or transcription in any application filed under this Act, or in a document filed or lodged in pursuance of such application, and the Registrar may, also correct any clerical error in any register maintained pursuant to this Act or the regulations.

(2) Subsection (1) shall not be construed as giving the Registrar any power to correct or amend an application, document or register in any material manner.

(3) A correction made in pursuance of this section shall be made by the Registrar on his or her own accord or upon the request of any person.

(4) Where any person requests the Registrar to correct an application or other document filed under this Act, that person shall pay, to the Registrar, such fee as may be prescribed.

Exercise of discretionary powers by Registrar

59. The Registrar shall give any party to a proceeding before him or her an opportunity of being heard before exercising adversely to that party any discretion vested in the Registrar by this Act or the regulations.

Competence of court and appeals from Registrar to court

60. (1) The court shall have jurisdiction in cases of dispute relating to the application of this Act and the regulations and in matters which under this Act are to be referred to the court.

(2) A decision taken by the Registrar under this Act, in particular, the grant of a patent or of a utility model certificate or a certificate of registration of an industrial design or of a mark or collective mark, or the rejection of an application for such a grant or registration, may be subject of an appeal by an interested party before the court and such appeal shall be filed as may be prescribed.

Infringement, unlawful acts and offences

61. (1) Subject to sections 17(3) and (5), 19, 37(4) and 46(2), an infringement shall consist of the performance, in Namibia, by any person other than the owner of the title of protection, without the agreement of the owner, of any act referred to in section 17, 37 and 46.

(2) On the request of the owner of the title of protection, or of a licensee if he or she has requested the owner to institute court proceedings for a specific relief and the owner has refused or failed to do so, the court may grant an interdict to prevent infringement, an imminent infringement, or an unlawful act referred to in sections 53(2) and (3) and 54, award damages and grant any other remedy provided for in the general law.

(3) On the request of a competent authority or an interested person, association or syndicate, in particular, of producers, manufacturers or traders, the court may grant the same relief in case of an act of unfair competition referred to in section 54.

(4) A person who performs an act which constitutes an infringement as defined in subsection (1) or an unlawful act as defined in section 53(2) and (3) and section 54, commits an offence and is liable on conviction to a fine of N\$4 000 or to imprisonment for a term of twelve months.

Application of international treaties

62. The provisions of any international treaty in respect of industrial property to which Namibia is a party shall apply to matters covered by this Act and, in case of conflict with the provisions of this Act, the provisions of the international treaty shall prevail.

Regulations

63. The Minister may, by notice in the *Gazette* make regulations relating to -
- (a) application fees for the grant of patents, utility model certificates and registration of industrial designs, marks and collective marks.
 - (b) the fees for copies of patents for the public;
 - (c) the surcharge payable in respect of late payment of renewal fees; and
 - (d) a matter which is necessary for the purpose of achieving the objects of this Act.

Administrative instructions

64. The Registrar may issue administrative instructions relating to procedures under this Act and the regulations as well as to functions relating to procedures under this Act and the regulations as well as to functions of his or her office.

Repeals

65. The Patents, Designs and Trade marks Proclamation, 1923 (Proclamation No. 17 of 1923), the Patents, Trade Marks and Copyright Proclamation, 1940 (Proclamation No. 33 of 1940) and the Trade Marks in South West Africa Act, 1973 (Act No. 48 of 1973) are repealed.

Savings

66. Anything done under the laws repealed by section 65 and in force immediately prior to the coming into force of this Act shall, so far as it is not inconsistent with the provisions of this Act, continue in force as if made under this Act.

Transitional

67. (1) Notwithstanding the repeals referred to in section 65, patents granted under the repealed laws shall remain in force but shall, subject to subsection (2) and (3) be deemed to have been granted under this Act.

(2) Patents thus granted and industrial designs thus registered shall remain in force for the unexpired portion of the period of protection provided thereunder subject to the payment of the fees provided for under this Act.

(3) Trade marks registered under the repealed law relating to trade marks, shall be due for renewal within the same period as under the repealed law or ten years from the entry into force of this Act, whichever period first expires, and, upon renewal, shall be classified in accordance with the International Classification.

Short title and commencement

68. This Act shall be called the Industrial Property Act, 1999 and shall come into operation on a date to be fixed by the Minister by notice in the *Gazette*.
